

April 3, 2008

Patricia Meggenhofen
3435 North Shelby Street
Hobart, Indiana 46342

Re: Formal Complaint 08-FC-82; Alleged Violation of the Access to Public Records Act by the City of Hobart

Dear Ms. Meggenhofen:

This advisory opinion is in response to your formal complaint alleging the City of Hobart ("City") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. I have enclosed a copy of the City's response to your complaint for your reference. It is my opinion the City did not violate the APRA so long as the City responded to your requests and does provide access to the City Municipal Code.

BACKGROUND

In your complaint you allege that you submitted requests dated January 22 and February 21, 2008 to the City for access to the City Municipal Code. You allege the City has responded that there are no municipal codes and that the City has also responded that the records are available via the internet. You allege the current records are not available via the internet, and the only records you can locate appear to be outdated. You filed this complaint on March 18, alleging you had received no response from the City after sending two letters requesting the records.

The City responded to the complaint by letter dated March 28 from City Attorney John Bushemi. Mr. Bushemi contends the City has responded to all of your requests for access to records. Regarding this particular request, Mr. Bushemi contends you have not been denied access to the complete city code. He further contends the City Municipal Code is available for inspection at the Clerk Treasurer's office during normal business hours. Mr. Bushemi clarifies that the Code consists of a 1995 binder and additional ordinances enacted since that date. Mr. Bushemi further indicates the City is currently in the process of recodifying the Municipal Code book through December 31, 2007.

ANALYSIS

The public policy of the APRA states, "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." I.C. § 5-14-3-1. The City is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the City during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

A request for records may be oral or written. I.C. §§ 5-14-3-3(a), 5-14-3-9(c). If the request is delivered by mail and the agency does not respond within seven days, the request is deemed denied. I.C. § 5-14-3-9(b).

The City contends it has not denied you access to the City Municipal Code and indicates the complete Code is available for inspection at the Clerk Treasurer's office during normal business hours. The City provided a copy of a March 28 letter sent to you indicating such.

You submitted requests to the City dated January 22 and February 21. If the March 28 letter were the first response the City provided to you, either in writing or orally, the City would have violated the APRA by not responding to the request within seven days of receipt. It is my understanding, though, that you have been in communication with the City regarding the request. So long as the City provided a response to your request within seven days and so long as the City Municipal Code is indeed available for inspection at the Clerk Treasurer's office, I cannot find that the City violated the APRA.

CONCLUSION

For the foregoing reasons, it is my opinion the City did not violate the Access to Public Records Act. Further, the City Municipal Code is available at the Clerk Treasurer's office for your inspection during normal business hours.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Mayor Brian Snedecore, City of Hobart
John Bushemi, City Attorney